The Atchisen Topeka And Santa Fe

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Sacramento Saloon

ANDY TODD, Prop.

The best of liquid refreshments always on tap, including imported and domestic goods.

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The Eagle Market

IN THE DISTRICT COURT OF THE Notice of Application for Permission FIRST JUDICIAL DISTRICT OF THE STATE OF NEVADA,

In and for the County of Ormsby.

Marion W. Bulkley, Defendant

of the First Judicial District of the State of Nevada, Ormaby County, and the complaint filed in the said county. in the office of the Clerk of said District Court on the 2d day of December, A. D. 1905.

THE STATE OF NEVADA SENDS GREETING TO

JOSEPH W. BULKLEY Defendant.

You are hereby required to appear in an action brought against you by the above named Plaintiff, in the Di :trict Court of the first Judicial District of the State of Nevada,Ormsby County, and answer complaint filed therein within ten days (exclusive of the day of service) after the service on you of this Summons is served ... said county, or if served out of said County, but within the District, twenty days, in all other cases forty days. or judgment by default will be taken against you according to the prayer of said complaint.

The said action is brought to obtain the judgment and decree of this court School Moneys for 1905, on the basis that the bonds of matrimony hereisfore and now existing and uniting you of \$6.996202 per census child: and said plaintiff to be forever annuled and dissolved upon the ground that Churchill135 \$ 943 62 at divers times and places since said Douglass317 with one Kate Cottrell, and particular- Esmeralda217 Hotel in the city of London, England, you lived and conabited with said Kate Cottrell.

All of which more fully appears by complaint as filed herein to which

you are hereby referred. And you are hereby notified that if you fail to answer the Complaint, the said Plaintiff will apply to the Court for the relief herein demanded.

GIVEN under my hand and Seal of the District Court of the First Judicial District of the state of Nevata Ormsby County, this 2d day of Decem ber, in the year of our Lord one thousand nine hundred and Five.

to Appropriate the Public Waters of the State of Nevada.

Notice is hereby g iven that on the 12th day of Sept., 1905, in accordance with Section 23, Chapter XLVI, of the Statutes of 1905, one Philip V. Mighels County of Ormsby and State of No-Action brought in the District Court | Engineer of Nevada for permission to appropriate the public waters of the State of Nevada. Such application to be made from Ash Canyon creek at points in N E % of S W % of section 10 T 15 M R 19 E by means of a dam and headgate and ave cubic feet per second is to be conveyed to points in N E ¼ of 8 W ¼ of section 11, T 15 K R 19 E., by means of a flume and pipe and there used to generate electrical power. The construction of said works shall begin before June 1, 1906, and shall be completed on or before June 1, 1987. The water shall be actually applied to a beneficial use on or before June 1, 1968.

> HEN .. Y THURTELL, State Hingineer

SCHOOL APPORTIONMENT. STATE OF NEVADA,

Department of Education, Office of Superintendent of Public In

Carson City, Nevada, July 11, 1905 To the School Officers of Nevada: Following is a statement of the second semi-annual apportionmen t of

Counties 2.215 40 7.829 63 1.516 97 2.719 28 Ormsby Storey989

White Pine525

Joe Platt has received samples of allor made suitings which are, without doubt the finest ever shown in this city. A number of suits have iready been made and they are per-

Total9,430 \$65,917 61

feet fits in every case. Get your ture taken and do it before the

IN THE SUPREME COURT OF THE STATE OF NEVADA.

In the Matter of the Application of Frank P. Kel.y in behalf of H. Osuna, for a Writ of Habeas Corpus. Wm. Woodburn, Atty. for Petitioner. Attorney General James G. Sweeney for the State.

Upon the application of Frank P. Kelly, in behalf of H. Osuna, a writ of habeas corpus was issued returnable before this Court. It appears from the return of the writ that H Osuna is held in the custody of J. F Bradley, Sheriff of Esmeralda County, upon a commitment of the Justice of the eace of Hawinorne Township to answer the charge of rape committed upon one Harriet Averill on the night of the 3d of October, 1905:

It is complained by petitioner that this commitment was issued without reasonable or probable cause and in support of this contention the following specific charges are made respecting the testimony introduced upon the preliminary examination of the

"That the said prosecuting witness, Harriet Averill, upon whom the said crime of rape was alleged to have been committed failed to appear and testify at said examination; but a written statement signed by one Harry Averill and attested by two witsaid alleged offense was admitted in evidence by the said Justice of the Peace against the objection of the attorney of said Osuna. That no legal testimony was given showing that Harry Averill, who signed said statement, was the same person as Harriet averill mentioned in said complaint, and upon whom the said rape was 'lleged to have been committed. 'That no legal evidence was introduced by the State at said examination, which ************************************ is shown by a certified copy of the testimony taken at said examination, and which is hereunto annexed and made a part of this petition. That there was no proof that the crime of rape or any other offense had been committed on Harriet Averill, or upon Harry Averill, or that there was sufficient cause to believe the said Osuna guilty of committing a public offense. It appears from the record that

Osuna was arrested and brought before the Justice of the-Peace at Hawthorne on the 6thd ay of October, 1905, and the complaint of the prosecuting witness, charging him with the crime of the defendant the examination was continued until October 10th., at which time the defendant appeared with his attorney and the examination was proceeded with. It appears that the complaining witness was not present and her name was called at the door without response. The denuty sheriff, A. N. Jones, was then called and sworn as a witness and teatified that when he brought the defendant to Hawthorne that the complainant and her mother accompanied them, Upon being asked, "Where 's Harry Averill now?" answered: "I think she has gone". The absence of in the testimony both as Harriett and at one time to have been within reach of the process of the court, is not accounted for in the record nor does it appear what steps were taken to procure her testimony at the hearing.

Upon this showing of the absence of the witness Harriett Averill, the District Attorney offered in evidence what purported to be a written statement of the facts of the alleged rape signed by the said Harriett Averill on the evening of the 4th of October. in the presence of witnesses and de clared in the ir presence to be a true statement of the facts of the alleged crime. This written statement was admitted in evidence over the objection of the defendant's attorney.

A witness to this written statement Robert A. Lovegrove, Farmer in charge of the Walker Lake Indian Reservation, was permitted, over defendants objection, to testify that he had written this statement for the complainant as she detailed the facts, that he read the same over to her before she signed it, and that he warned her of the seriousness of the charge she was making against the

S. W. Hance, a telegraph operator residing at the place where the crime is alleged to have been committed, was, also, permitted to testify, over defendant's objection, that he was a witness to the written statement and heard the complainant detail the facts therein stated; also, that at noon of the same day that the said Harriet Averill had come to his office and had made the same charges against the defendant to him, and, that at her solicitation, he dictated a telegram to her mother, who was then in San Francisco, relative to the assault and requesting her to come home at once. A copy of this telegram was offered and admitted in evidence over the defendant's objection

Dr. F. C. Pache, a physician residing at Hawthorne, was also permitted to testify, over defendant's objection, that at the time of making an examination of the person of the complainant some days after the alleged offense was committed she informed him that the defendant had made a criminal assault upon her and with violence accomplished his purpose.

The position taken by counsel for the petitioner that these statements of the complainant were made at a time too remote to form a part of the res geste; were hearsay and for that on were inadmissible, must be ustained. (State vs. Campbell, 20

It apears, however, from the record that after the complainant had signsame time the witness warned the

that she said it was true. That he told the defendant that he would place him under arrest to appear before a court to answer the charge. That he asked the defendant what he had to say to the charge and that fendant's admissions?' The court the defendant said "he would answer cites other examples and then refer to make them."

This portion of the testimony of the witness does not seem to have been considered by cousel upon either side the testimony relative to the state. State vs Guild 10 N. J. L. 180, 18 Am. ments of the complainant heretofore Dec. 414.) referred to, made without the presence of the defendant. We think, counsel, but as it has not been prasented in the briefs or arguments in this matter, and as, in the view we take of the case, the action of the magistrate in holding the defendant to answer, can be sustained upon other portions of the testimony alone, the question will not now be deter-

It is urged by counsel for petitioner that with the statements made by the to be but slightly over fifteen years complainent excluded, there is no competent proof of the corpus delicti.

N. Jones, the deputy sheriff, gave tesnesses a day after the commission of timony relative to an admission made by the defendant while he was being taken upon the train from the place where the offense is alleged to have been committed to Hawthorne. That portion of the testimony of the witness Wilson relative to the admission is as follows:

the car at a place called Shurz between here and Reno with Mr. Jones and a young lady, I afterwards found ants skirt. to be Harry Averill, and they took possession of a seat I had occupied up to that time. I took the seat across the aisle. Seeing the man with bracelets on excited more or less curiosity and when he came into the car the young lady went in the car behind and got another lady which I on her wrists; also, a mark on the learned was her mother. The mother side of her throat and that her throat came in and was talking to the defendant. The mother asked him what made him do it. The defendant says I don't know. The mother was hysterical and she made the remark I and on the side of complainant's ought to kill you. He assented. He throat, apparently scratches. of rape, read to him. At the request | times and about that time she fainted of but twenty-one years of age, and Co. school Dist. 2, fund 290 84

and swooned away." The testimony of the deputy sheriff, relative to this admission, was substantialy to the same effect. Counsel for petitioner say in their

"The testimony of Wilson and Jones deputy sheriff, as to the admissions of the defendant to his wife on a railroad car after his arrest are clearly inadmissible because there was no delicti and were sufficient together proof that a crime had been committed, and the corpus delicti cannot be justify the magistrate in holding the established by the confession of the

defendant.' It will be conceeded that the overthis important witness, who is called whelming weight of authority in this of this evidence to warrant the concountry is to the effect that an extra- viction of the defendant, and upon as Harry Averill, and who is shown judicial confession or admission of that question express no opinion prisoner, not corborated by independent proof of the corpus delicti. will not justify conviction. It is not requisite, however, that the crime charged be conclusively established by evidence independent of the confession or admission. It is sufficient if there be other competent evidence tending to establish the fact of the commission of a crime.

In people vs. Bradley, 16 Wend. (N Y.) 53, Nelson, C. J. said: proof of the body of the crime, the corpus delicti, independently of the confession is not required by any of the cases; and in many of them slight corroborating facts were held suffici-

In the case of state vs Hall, 31 W Va. 505 the Court said: "We know of no decisions anywhere that hold the admissions of the defendant are not competent eidence tending to prove the corpus delicti. Such admissions may not be sufficient proof the corpus delicti, but they certainly By J. W. Legate, Deputy. are competent evidence tending to prove that the crime charged has been committed."

In the case of Mattheys vs State, 5 Ala., 187; 28 Am. Rep. 698, where many STATE OF NEVADA. authorities are cited and reviewed. the Court by Bricknell, C. J. says: 'Nor must we be understood as affirming that the proof of the corpus delicti must be as full and conclusive as would be essential if there was no confession to corroborate it. Evidence of facts and circumstances, at tending the parucular offense, and usually attending the commission of similar offense-or of facts to the discovery of which the confession has led, and which would not probably have existed if the offense had not been committed-or of facts having a just tendency to lead the mind to the conclusion that the offense has been committed be admissible to cor--would roborate the confession. The weight which would be accorded them, when connected with the confession, the jury must determine, under proper instructions from the Court.

The case of People vs. Simpson, 107 Cal. 346, cited in petitioner's brief, is in line with the authorities above quoted. The court in that case say: 'Ine term 'corpus delicti' means exactly what it says. It involves the element of crime. Upon a charge of homicide, producing the dead body does not establish the corpus delcti. It would simply establish the corpus; and proof of the dead body alone, ed with a confession of the de fendant of his guilt, would not !e sufficient to convict. For there must ed the written statement, that the be some evidence tending to show witness Lovegrove called in the ue the commission of a homicide, before fendant, and that the witness read the a defendant's confession would be adstatement over to him. That at the missible for any purpose. • • • To plainant that it was a serious body, the nature of the wounds, the irge she was making and that she evidence of a struggle, the physical had better be careful what she said; | circumstances surrounding the affair prices reasonable.

may furnish evidence of the corpus delicti-they may indicate that a crime has been committed, but there must be proof of the fact from some source other than that of the debefore a court or when it was time in to the case under consideration says: "Laying aside the evidence of defendant's admissions, there is nothing whatever in the record even pointing toward the commission of a in the presentation of this case as crime." (See also People vs Jones 31 standing in a different position from Cal. 567; State vs Lamb 28 Mo. 219.

In the case of the State vs. Ah Chuey, 14 Nev. 92, this Court held that however, it presents a question worthy "proof of the corpus delicti may be of careful consideration of court and established by circumstantial evidence, provided it is satisfactory."

In the case before us we think there was competent evidence independent of th admissions of the defendant tending to establish the corpus delictl. Dr. Pache testified that on Saturday four days after the alleged offense was committed, he made an examination of the person of the complainant. Harriet Averill, who is shown of age; that he found that her hymen was inflamed and at some time evi-Two witnesses, C. O. Wilson and A. dently had been lacerated; that the young lady was rather hysterical and would only permit occular inspection and digital examination on account of the extreme tenderness of the parts. He further testified: "From the evidence I found I would state that in all probability that Miss Averill at some time had had intercourse with a member of the opposite sex." "This defendant was brought into There was other testimony of the witness relative to what appeared to be blood stains upon the complain-

The witness Hance, who saw the complainant at noon of October 4th testified that she was then agitated and nervous and appeared to have been crying; that he observed marks of violence upon her nose and upper lip; that she showed him marks up seemed to be swollen and red.

The witness Lovegrove, also, testified to observing on the evening of October 4th, a mark upon the nose

sault, occupying a box car as a home, (the defendant being in the employ of the railroad) the defendant's wife, mother of the complainant being absent, and the complainant being left in defendant's care.

We think these facts and circumstances tended to prove the corpus with the defendant's admission to defendant to answer.

We are not called upon, on this hearing, to pass upon the sufficiency this connection it is proper to observe that a magistrate in holding a defendant to answer for a crime, is not required to have submitted evidence sufficient to establish the guilt of the person charged beyond a reasonable doubt. As was said in a ie cent decision, In re Mitchell (Cal. | App.) 82 Pac. 347, "In order to hold efendant and put him on his trial, the committing magistrate is not required to find evidence sufficient to Hamiling, warrant a conviction. All that is required is that there be a sufficient legal evidence to make it appear that 'a public offense has been committed and there is sufficient cause to believe the defendant guilty thereof" eve the defendant guilty thereof". •
The writ issued herein is dismissed. •

Norcross, J. We concur: Fizzgerald, C. J. Talbot, J. Filed December 18, 1905. W. G. Douglass, Clerk

OFFICIAL COUNT OF STATE

County of Ormsby, a. s. James G. Sweeney being duly sworn say they are members of the Board of Examiners of the State of Nev., that on the 29th day of Nov '05 they, (after having ascertained from the books of the State Controller the amount of money that should be in the Treasury) made an official examination and count of the money and vouchers for money in the State Treasury of Nevada and found the same correct as fellows:

3151.107 29 Paid cein venchers not re-turned to Controller 16,835 71 167.945 00

State School Fund Securities. Irredeemable Nevada State School bond 380, 380,000 00 Mass. State 3 per cent 537.000 00 253,700 00 Nevada State Bonds Mass. State 31/2 per cent 313 000 00 bonds United States Bonds 215.000 00 \$1,866,643,00 Total W. G. Douglass

James G. Sweeney Subscribed and sworn before me this 29th day of November, A. D. 1905. J. Boane,

Notary Public, Ormsvy County, Nev. nia and Novada. Large fresh Eastern oysters in bulk

at Davey & Maishs' day stock which is well selected and six house. House, barn and five lote

Quarterly Report.

OFFICE COUNTY AUDITOR Ormsby County, Nevada.
To the Honorable, the Board of Coun ty Commissioners, Gentlemen: In compliance with the law, herewith submit my quarterly re-port showing receipts and disburse-ments of Ormsby County, during the quarter ending Sept. 30, 1905.

Receipts. Balane in County Treasury at end of last quarter\$20085 98% Gaming Lienses 1081 00 Liquor Licenses310 29 Fées of County Officers628 40 Rent of County Bldg.307 59 Semi-Annual apportionment of

Slot machine licenses 94 00 Douglas County, road work ...41 00 Total \$65540 21% Disbursements.

General Fund2541 39 Salary Fund2440 06 County School fund60 00 Agl. Assn. Bond Fund. Series County school fund, Dist. 2 ... 111 16 County school fund, Dist 3 ... 68 45 State school fund, Dist. 1 ... 1287 50 State school fund, Dist. 275 00 Special School Building Fund,

\$25516 85 Re pitulation. Cash in Treasury Juluy 1, 1905 20085 98% Receipts from July 1st, to September 30, 190545454 23 Disbursements from July 1st

Respectfully submitted, H. DIETERICH. County Auditor.

Recapitulation To balance cash on hand Oct. the complainant, his step-daughter. Co. School Dist, 3, fund220 901 were at the time of the alleged as-State School Dist, 1 fund...4213 06 State School Dist. 2 fund ... 237 51 State School Dist. 3, fund...49 39 State School Dist. 4, fund ... 18, 22 Agl. Assn. Fund A......591 221/4 Agl. Assn. Fund B......147 261/4 Agl. Assn. Fund, Special 1239 74 Co. School Dist. 1, Fund, Spe-

Fund 6 50

Co. School, Dist. 4, Library Fund \$40023 36% Respectfuly submitted H. B. VAN ETTEN County Cler

MILLARD CATLIN.

Freighting Draying

Trunks and Baggage taken to and delivered a all trains.

ANNUAL STATEMENT

FUNDS. Of The State Life Insurance Company Indianapolis, Ind. Capital (paid up) Assets (admitted) 3.160.083 31 Liabilities, exclusive of cast tal and net surplus 2.615.497 63 Premiums *,046,901 77

Other sources Total income, 1904 2,224,032 78 Expenditures 300,902 63 Dividends 65,240 11 Other expenditures Total expenditures, 1904 1,050,102 76 Business, 1904

1,416,245 56 Risks written 23,276,143 00 Premiums thereon Losses incured 316,885 0 Nevada Business. Risks written Premiums received 2,852 43 Losses paid 5,000 00

W. S. Wynn Secretary. Ho. For the West. Tell your friends that the colonist rates are going into effect March 1st.

1905 and expire May 15, 1905. The rate from Chicage, Ill. \$31.00. St. Louis Mo., New Orleans, La, \$30 00. Council Bluffs Ia., Sioux City. Ia., Omabe. Neb., Kansas City, Me., Mineola, Teras and Mouston Texas, \$25.00. Rates apply to Main Line points in Callie

Two quartz wagons, one wood and C. W. Friend is getting in his holl- one low wheel wagon, also harness for by at Adam Bay, Silver City, Bire.